that it is unfair to impose a tax on trees which in this country are already taxed under the Revenue Settlement. The proposed duty, however, is not a tax on the ordinary usufruct of the tree including toddy used for jaggery, but on toddy used as fermented liquor or for the manufacture of arrack. The tree-tax system is intended as an improvement on the farming system under which, as I have already explained, it is impossible to regulate taxation according to the quantity consumed. Section 23 of the Madras Act which empowers a grantee to proceed against any person holding under him for the recovery of any money due to him as an arrear of rent has been omitted. In the first place, we have no Rent Recovery Regulation. Further, it is not considered expedient to invest Abkari renters with such powers. Even the Jenmies are not given the power of proceeding against the Kudiyans for arrears of rent. Part 6 deals with licenses. At present licenses can be issued only by the Dewan. In the Bill the Division Peishcars are empowered to issue licenses. The delegation of the power to Division Peishcars subject to the provisions of section 21 would only conduce to administrative convenience. Part 7 contains some general provisions. The first two sections (24 and 25) are more or less in accordance with the existing law. Section 26 provides for the passing of rules regulating several important matters connected with the Abkari administration. Part 8 is the most important portion of the Bill. It deals with the powers and duties of officers. The powers conferred on the Abkari officers are doubtless very large, but if any other than the farming system is to be adopted, such powers are necessary for fiscal as well as for police purposes. The severe penalties provided for abuse of powers by Abkari officers may, however, be a safeguard against the powers being used to the detriment of innocent persons. Part 9 deals with penalties. As in the case of powers of officers, the penalties provided are higher than those under the present law. Regulation I of 1054 provides only for fines: in case of default, for simple imprisonment. Under the existing law appeals from the decisions of the District Magistrates lie to the Dewan and the High Court have practically nothing to do with the Criminal administration so far as it relates to Abkari.

I would not detain the Council further. I may add that if the Council is prepared to discuss and adopt the principle of the Bill to-day, I shall move for the Bill being referred to a Select Committee. The Council will please note that as it is proposed to try the new Abkari system in one Taluk from the beginning of the next Malabar year, it would not be expedient to indefinitely postpone the consideration of this Bill.

He introduced the Bill accordingly and moved that the Bill with the statement of Objects and Reasons be published in the Gazette.

The motion was put and agreed to.

The discussion of the principle was deferred to the next meeting.

BILL TO AMEND THE STAMP REGULATION (I OF 1059.)

Mr. Thanu Pillai.—I beg to introduce the Bill to amend the Stamp Regulation (I of 1059) for which I have already obtained the permission of the Council.

I would briefly indicate the object of the amendments embodied in the Bill of which copies have already been circulated among the members. Regulation I of 1059 which is our present Stamp Law is a reproduction with the necessary modifications of the British Indian Stamp Act–I of 1879. The latter Act has since been amended by Acts I, V and XVIII of 1886, VI and XI of 1889, XX of 1890, XII of 1891, VI of 1894 and XIII of this year. Some of the amendments have no bearing on the law as applicable to this country, but others contain additions and modifications which in the interests alike of the State and the public it appears to be necessary to adopt. Opportunity is also taken to modify the law in certain other respects as I shall presently explain.

Section 1 contains the amplification of the definition of the term 'policy of insurance' introduced by Act I of 1888 and Act VI of 1894. The object is to bring within the definition of the term, 'policy of sea-insurance' and re-insurances in the case of fire as well as sea-insurances.

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SECTION 3 contains the provisions of the English law regarding sea-insurance which have been adopted in British India.

SECTION 2 is Section 6 of Act I of 1879. This section was omitted in Regulation I of 1059. I am unable to divine the reason of this omission. The reported cases under the corresponding section of the Indian Act show that the provision is by no means a dead letter. By way of illustration I would quote a single case: "Where, in the first of two documents, the executors of the deceased partner of a Firm conveyed to the surviving partner the deceased's share of the property of the Firm valued at Rs. 75,399-1-9, and in consideration of this transfer the surviving partner executed to the executors, in the second document, a mortgage-deed for Rs. 160,000 and it was urged that so far as the mortgaged property up to Rs. 75,399 was concerned, the two documents related to one transaction and that it was distinguished only so far as regards the balance of Rs. 86,000-14-3: *held* that the contention was admissible, that the mortgage up to Rs. 75,399-1-9 was the consideration for the conveyance, that the instrument so far formed part of the transaction dealt with in the conveyance and was chargeable only with one rupee under section 13 of the Stamp Act of 1869 (corresponding to S. 6 of Act I of 1879) and that the stamp-duty chargeable on a mortgage of Rs. 86,000-14-3 under Art. 10, Sch. I, Act 18 of 1869 [or Art. 44 (b) of Act I of 1879] was Rs. 175, making in all Rs. 176." Under the Travancore Regulation, as it now stands, the stamp duty on the mortgage deed would, I believe, be calculated on the total amount of Rs. 160,000. Supplementary documents correcting errors in previous documents would ordinarily fall under this section.

The 2nd para (Explanation of section 4) is taken from Act VI of 1894. It is also in conformity with the ruling of the Travancore High Court—that section 23 does not apply to certificates of sale. The object of the 1st para is to extend the above principle to cases of conveyance subject to mortgage. The local High Court have held that under section 23 the stamp duty on a conveyance subject to a mortgage should be calculated on the actual purchase money *plus* the amount of the mortgage. Under the corresponding section (24) of the British Act (I of 1879) there were conflicting rulings in British India. (*Vide* I. L. R. 5. Madras, 18 and I. L. R. 5. Bombay, 470). In the latter case the Bombay High Court observed:— "Section 24.....imposes both upon private purchasers and upon the officers of Government a difficult task. When property is sold subject to a mortgage from whom is the amount due for principal to be ascertained? It may be replied: from the mortgagor and mortgagee or other incumbrancer. But in India, the mortgagor and mortgagee.....are seldom in accord as to the amount due upon it..... If section 24 is ultimately retained on the Statute book, which we hope it may not, it is fair that some reference to it should be made under the article "Conveyance" in the Schedule to the Act." The more recent decisions in British India have, however, been more or less uniform. The following, I believe, is the latest ruling:— "Section 24 applies to cases in which the purchaser undertakes a liability, and his undertaking in such cases no doubt forms part of the consideration. It is one thing to make the sale subject to, in the sense of accompanied by, a condition to discharge a mortgage; it is another to sell property subject to a mortgage, that is to say, to sell the interest remaining in the mortgagor without imposing on the purchaser any personal obligation" (I. L. R. 7. Madras, 421).

The practice in this country despite the ruling of the Travancore High Court above referred to is not uniform. Prior to the above ruling, the stamp duty on conveyances subject to mortgages was generally calculated on the actual purchase money. Even now, I understand, the same practice is often followed. In this country, mortgage is almost an invariable preliminary to sale and in the vast majority of cases the mortgagee is the vendee. The purchase money is the consideration for the equity of redemption. Section 23 as now construed is a source of great hardship to purchasers of real estates and the proposed amendment contains the remedy.

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SECTION 5. The British Indian Stamp law as well as our own treats the omission to properly stamp a document chargeable with a duty of one anna differently from all other classes of instruments. The exaction of a money penalty is considered sufficient punishment in respect of the latter where the omission to stamp at all or stamp duly arises from negligence, inadvertence or ignorance of the provisions of the Stamp law. On payment of the deficient duty and penalty, the document is also admitted in evidence. Whereas, prosecution is the only punishment in regard to documents chargeable with one anna duty and the documents become absolutely valueless for purposes of evidence. Possibly the peculiar facility which these documents afford for evasion of payment of duty and the difficulty which they present for detection and which renders it necessary that the punishment in actual cases of detection should be sufficiently severe and deterrent is the justification for the difference. But it appears to me that the imposition of a heavy money penalty would meet this object and at the same time mitigate the rigor of the present provision.

SECTIONS 7, 8, 9 and 10. Under the British Act, Stamp references are made by the Collectors to the Chief Controlling Revenue authority which has the power to finally dispose of such references. Under the Travancore Law, the chief Revenue authority has no power to dispose of any reference—the Huzur Cutcherry being a mere conduit pipe to pass on the reference to the High Court. Being an essentially revenue law, it seems but reasonable that the chief Revenue authority should have the power to deal with such references, it being made optional with such authority to obtain an authoritative construction of the law in important or doubtful cases.

SECTION 11. The Division Peishcar's decision under the Stamp Regulation is final, and however unjust or incorrect the decision may be, no authority is competent to revise it. Where a Division Peishcar wrongly adjudges duty and imposes a penalty, the party affected has no remedy. Under the law as it stands no body has power to remit such duty and penalty. Section 39 authorizes only the refund of penalty and duty already paid; so that if the party is too poor to pay the duty and penalty in the first instance, the document must ever remain with the Peishcar.

Under Act XVIII of 1869 the orders of the Collector were open to revision by the Chief Controlling Revenue authority; but that provision was omitted in Act I of 1879, chiefly on the ground that in England there was only one authority by which such questions were disposed of—the Inland Revenue Commissioners. But experience has shown the need for a provision as to appeal or revision even in British India. In its Proceedings dated 22nd August 1882, the Madras Revenue Board seems to have brought to the notice of Government that "however wrong the decision of a subordinate officer as to the amount of stamp duty leviable on a document might be, and however great might be the amount paid, there was absolutely no remedy provided by law for the injured party." The Board suggested that an appeal from the decision of the Collectors to the Board should be provided and that the law should be amended accordingly. I do not know what orders were passed by the Madras Government on the Board's suggestion. But experience here has clearly shown the need for an amendment of the law in this direction.

SECTION 12. There is no provision in the law for recovering stamp duties and penalties. The only course is to prosecute the defaulter. I do not see why the recovery could not be effected as an arrear of public revenue.

SECTION 13. Doubts have been raised as to whether in recovering fines the provisions of the Criminal Procedure Code are applicable. Section 5 of the Travancore Criminal Procedure Code provides that offences under special and local laws shall be enquired into and tried according to the provisions of that Code. But it is doubted whether this section extends to the provisions relating to 'Execution.'

SECTION 15 embodies the modifications in the Schedule introduced by Acts I of 1888 and VI of 1894. The Alleppey Chamber of Commerce have represented the necessity, in the interests of shippers and merchants generally, of adopting these modifications. Under Regulation I of 1059 a policy of sea-insurance is chargeable with stamp duty at the rate of 4 annas when the amount insured does not exceed 1,000 Rs., and with 4 annas additional for every additional sum of 1,000 Rs. or fraction of 1,000 Rs. In British India the rates are much lower and it is obviously desirable to assimilate our Stamp law in this respect to that prevailing in British India.

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SECTIONS 16 and 17 have been taken from Act XIII of 1897 recently passed in British India. The object of the amendment will be clear from the following extract from the speech of Sir J. Westland:—"The amendment relates to a class of documents which have, ever since the last general Stamp Act was passed, entirely escaped the proper duty payable upon them. Article 60 of the general Stamp Act provides that a five rupee stamp shall be the maximum chargeable in respect of the transfer of any interest secured by a bond, lease, mortgage-deed or policy of insurance. In the Stamp Act which was in force before the Stamp Act of 1897 was passed, the word 'lease' did not occur and nobody can find out how that word 'lease' came to be inserted in this new Stamp Act. The Bill of that time was in charge of Mr. Cockerell and a few months after the Act had passed, his attention was drawn to the operation of this article, when he happened to be inspecting the office of the Collector of Madras. He found that a transfer or conveyance of an estate of very large value which was held under a lease (as many of the tea and coffee estates are held under a lease from Government), was dealt with as a transfer of an interest secured by a lease. A pure conveyance of this sort ought obviously to bear a conveyance stamp which comes to about one per cent. on the whole value. He expressed his surprise that this article of the Stamp Act had been interpreted in this way, and stated what of course he knew to be the case, having been in charge of the Bill, that it was intended for an entirely different purpose, and that this particular document on which only a five-rupee stamp had been paid was, in his opinion, really a conveyance on which a much higher stamp should have been paid.

* * * * *

"The object we have in view is to remedy what is a distinct error in the law of 1879 and to remove from it a provision which makes the duty leviable on an important class of transactions, quite different in principle from that which is levied in England and other countries where stamp-duties are levied. The remedy we propose is simply the restitution of this particular Article 60 to the form it had before the Act of 1879 came into force, namely, by cancelling in it the word 'lease'; and we define in another part of the article that the transfer of a lease which is made by way of assignment and not by way of under-lease, that is to say, that the transfer of a property which is held in lease-hold tenure, is to be stamped in the same way as a conveyance is stamped."

He introduced the Bill accordingly and moved that the principle of the Bill be affirmed.

The principle of the Bill having been affirmed by the Council Mr. Thanu Pillai moved that the Bill be referred to a Select Committee consisting of Messrs. Krishnaswamy Rao, Prince, Ramanatha Rao and the mover.

Seconded by Mr. Nagam Aiya.

Carried.

Mr. Krishnaswamy Rao.—I wish it to be distinctly stated whether the Select Committee are at liberty to make such other modifications in the Bill as may appear to them desirable. The Bill being a measure connected with public revenue it is well to have the point made clear beforehand.

President.—Yes. The Select Committee may use such discretion.

EVIDENCE BILL.

Mr. Prince.—I beg to ask leave to introduce a Bill consolidating the law of Evidence. I had hoped to send in the draft Bill before this. I shall, however, be able to send the draft in shortly for circulation among the members before the next meeting of the Council.

Leave was accordingly granted.

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